



Camberley House
1 Portesbery Road
Camberley, Surrey
GU15 3SZ
Tel: 01276 509306
Fax: 01276 761076
Email: info@labourproviders.org.uk
Website: www.labourproviders.org.uk

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Employment Intermediaries and Tax Relief for Travel and Subsistence

WRITTEN SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS

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Contact

David Camp, ALP Director, Tel: 07855 570007, E-mail: David@alliancehr.co.uk

Introduction

The Association of Labour Providers (ALP) is a trade association supporting and representing those organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. The ALP has approximately 290 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the ALP Constitution. ALP member organisations supply approximately 70% of the temporary workers into these sectors. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters Licensing Authority (GLA). The ALP provides a range of services to help labour providers achieve labour standards compliance and good practice in the supply of workers.

ALP Response

Question 1 - ALP agrees that the structure of the proposed legislative changes will achieve the policy objectives subject to the following:

1. The exclusion, "professional service firms that second staff to clients will not be caught by the new rules, as their business is not substantially in the supply of labour" should not be allowed to create a loophole whereby businesses define themselves as "professional service firms" in order to evade the legislation.
2. "Personal services" should not be defeated by sham substitution clauses, fettered or not.

Question 6 – ALP highlights the following practical and/or commercial difficulties with the definition of the terms supervision, direction and control:

1. The term "to have the right to" as in "to have the right to supervise, direct or control the work" needs to be defined in the legislation.
2. The legislation should be clear that use of the word "or" means that only one of supervision, direction or control needs to be present for the proposal to apply.

3. Definitions could be more distinct between supervision, direction and control. Employment Status Manual: <http://www.hmrc.gov.uk/manuals/esmmanual/ESM2029.htm> is helpful but could be rationalised and structured to be of more straightforward help.

Question 7: ALP believes Option 1 for a transfer of liability would work best to ensure future compliance.

1. Correctly it will be the engager's responsibility to confirm with the employment intermediary whether the contracted worker will be under the right of supervision, direction or control.
2. Correctly, the engager for whom the worker provides their personal services will be jointly and severally liable to HMRC for any outstanding obligations.
3. Option 1 drives the engager to conduct appropriate due diligence and deters collusive phoenixing in order to avoid Treasury tax and NI debt.